



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0300-19
2. Advertiser :	Amaysim
3. Product :	Mobile Phone or SMS
4. Type of Advertisement/Media :	Billboard - Digital
5. Date of Determination	25-Sep-2019
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

The advertisement features a tiled background of eggplant emoji's. Text states "30GB of Tinder for \$30. that's 375,000 right swipes (go get 'em tiger)".

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

Amaysim displays and scrolls down hundreds of large eggplant emojis, which is intentionally sexually suggestive of the dating service and how mobile data will be used.

Amaysim portrays a suggestion of how men would approach women using their service - an eggplant emoji representing nudity, "a dick" and "a dick picture". This is the only emoji used, and the marketing could have communicated the same message without its singular use.

THE ADVERTISER'S RESPONSE



Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

Thank you for your letter dated 9 September 2019.

The digital advertisement that is the subject of complaint 0300-19 (Advertisement) is compliant with AANA Advertiser Code of Ethics (Code of Ethics), including Section 2. Capitalised but undefined terms used in this letter have the meaning given to them in the Code of Ethics.

With specific regard to Section 2, the Advertisement does not:

- discriminate against or vilify any person or section of any community;*
 - use images of Minors;*
 - employ sexual appeal in a manner which is exploitative or degrading of any individual or group of people;*
 - present or portray violence;*
 - include strong or obscene language, or otherwise inappropriately use language;*
- and/or*
- depict material contrary to Prevailing Community Standards on health and safety.*

Further, the Advertisement is a marketing promotion without any direct use of sexual appeal. At most, the Advertisement uses overt and gender-neutral innuendo which would only be understood by a mature audience.

The Advertisement, which is a promotion of an amaysim mobile data plan, publicises the amount of data on offer at a given price by making a playful reference to the amount of online usage that an individual would have in terms of functionality of the popular dating app, Tinder. The background image of the Advertisement is a tiled image of the eggplant emoji, which is widely available on all mobile devices as standard (i.e. both Android and iOS).

The emoji is simply a cartoonish image of an eggplant. Amaysim submits that it cannot be the case that such a simple image of fruit could contravene any advertising standard.

We note the complainant's particular concern that the use of eggplant emojis in the Advertisement was "intentionally sexually suggestive" and, somewhat curiously, that "the marketing could have communicated the same message without its [the eggplant's] singular use".

The eggplant emoji is incorporated into the Advertisement in a light-hearted manner, in connection with a well-known dating App. There is no reason to draw any particular meaning from it beyond Tinder being a dating App. The reference to "swiping right" is a reference to the functionality used on the Tinder App to communicate an interest in dating another Tinder user.



The Advertisement is designed in a way to ensure sensitivity to its relevant audience i.e. mature, mobile data users who utilise dating apps such as Tinder. It is also worth noting that, in the majority of cases, dating apps are age-restricted. In the case of Tinder, users have to be at least 18 years old (in accordance with the app's global guidelines).

Further, any innuendo is not explicit and is unlikely to be understood by Minors. Minors are not entitled to use Tinder and are not likely to be familiar with it. There are no references to sex or sexuality in the Advertisement (other than an emoji of an eggplant and a reference to Tinder) and we consider that such references do not "employ sexual appeal in a manner which is exploitative or degrading of any individual or group of people".

In relation to the suggestion that "Amaysim portrays a suggestion of how men would approach women using their service – an eggplant emoji representing nudity, "a dick" and "a dick picture" and how mobile data would be used, " there is nothing in the Advertisement to support any of these inferences. Specifically:

- the Advertisement is not directed at any gender;*
- the Advertisement does not say anything about how any person should or might approach any other person; and*
- there is nothing in the Advertisement to suggest that users of Tinder can or should take photos of themselves (and it is our understanding that in fact Tinder does not allow the sending of images).*

Finally, we note that the Advertisement has already been taken down from the Wynyard station as it had reached the end of its media booking.

To summarise, we request that the complaint relating to the Advertisement be dismissed on the grounds that:

- the innuendo employed in the Advertisement is mild and is unlikely to be understood by Minors;*
- the Advertisement treats the issue of sex, sexuality and nudity with sensitivity to the relevant audience (mature, mobile data users that utilise dating apps);*
- that most people would find the Advertisement humorous rather than offensive; and*
- in any event, the Advertisement has been taken down from Wynyard station.*

THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainant's concern that the advertisement is sexually suggestive of the dating service Tinder and how mobile data will be used.

The Panel viewed the advertisement and noted the advertiser's response.



The Panel considered whether the advertisement was in breach of Section 2.4 of the Code. Section 2.4 of the Code states: “Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience”.

The Panel noted the complainant’s concern that the advertisement is sexually suggestive of the dating service Tinder and how mobile data will be used, and that the business is suggesting how men would approach women using their service, i.e. by sending a “dick picture”.

The Panel considered whether the advertisement contained sex, sexuality or nudity.

The Panel considered that the advertisement did not contain a depiction of people, and therefore did not contain nudity.

The Panel considered whether the advertisement contained sex. The Panel noted the dictionary definition of sex most relevant to this section of the Code of Ethics is ‘sexual intercourse; sexually stimulating or suggestive behaviour.’ (Macquarie Dictionary 2006).

The Panel considered that the depiction of an emoji, no matter the intended reference, is not of itself a depiction of sexual intercourse, sexual stimulation or suggestive behaviour and that the advertisement as a whole did not contain sex.

The Panel noted the definition of sexuality includes ‘sexual character, the physical fact of being either male or female; The state or fact of being heterosexual, homosexual or bisexual; sexual preference or orientation; one’s capacity to experience and express sexual desire; the recognition or emphasising of sexual matters’. The Panel noted that the use of male or female actors in an advertisement is not of itself a depiction of sexuality.

The Panel considered that a reference to male genitals through the use of an emoji could be considered a recognition or emphasis of sexual matters and that the advertisement did contain sexuality.

The Panel then considered whether the advertisement treated the issue of sex and sexuality with sensitivity to the relevant audience.

The Panel considered the meaning of ‘sensitive’ and noted that the definition of sensitive in this context can be explained as indicating that ‘if you are sensitive to other people's needs, problems, or feelings, you show understanding and awareness of them.’

(<https://www.collinsdictionary.com/dictionary/english/sensitive>)

The Panel noted that the requirement to consider whether sexual suggestion is ‘sensitive to the relevant audience’ is a concept requiring them to consider who the



relevant audience is and to have an understanding of how they might react to or feel about the advertisement – the concept of how subtle sexual suggestions is or might be is relevant to the Panel considering how children, and other sections of the community, might consider the advertisement.

The Panel noted that the relevant audience for this billboard advertisement would be broad and would include children.

The Panel noted that the eggplant emoji is recognised by some members of the community to be a symbol for a penis when sexting, however considered that this is not something that would be known by most children.

The Panel noted the advertiser's response that at most, the advertisement uses overt and gender-neutral innuendo which would only be understood by a mature audience.

The Panel noted that the image is a tiled background in the advertisement and is not the main focus of the advertisement.

The Panel considered that the image of an eggplant emoji would not of itself be considered confronting by most members of the community and considered that the sexual suggestion in the advertisement was a reference that would not be understood by the broad community. The Panel noted that it has consistently determined that advertisements which use mild sexual reference, where a non-sexualised explanation of the meaning would be taken away by children, do treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience (0197-18, 0001-19).

The Panel noted the complainant's concern that the advertisement is suggesting to men how to approach women, by using a photograph of their genitals. The Panel considered this interpretation of the advertisement to be highly unlikely to be shared by most members of the community.

The Panel considered that this advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience and did not breach Section 2.4 of the Code.

Finding that the advertisement did not breach any other section of the Code the Panel dismissed the complaint.